3 Biss. 13. A soldier is bound to obey the orders of his superior where they are not clearly illegal and such orders will be a protection to him. *Riggs v. State,* 43 Tenn. 85; *Sampson v. Smith,* 15 Mass. 365.

MASTER AND SERVANT—SAFE PLACE TO WORK—NEGLIGENCE OF MASTER.—PENN R. R. v. JONES, 123 FED. 753 (PA.).—An employe was killed by the backing of a train off a stub switch which had no bumper. *Held,* that failure to protect the end of the switch rendered the railroad liable for negligence. Archibald, J., *dissenting.*

This ruling is directly contradictory to *R. R. v. Driscoll,* 176 Ill. 330. But the general weight of decisions is as above. *Chesapeake & O. R. Co. v. Hennessey,* 38 C. C. A. 314 (Ky.). The question is whether such absence of bumper is a part of the general plan of the road or a defect in the road. A master need not use the newest and safest appliances. *R. R. v. Lonergan,* 118 Ill. 41. It is for him to decide how railroad shall be built. *Tuttle v. R. R.,* 122 U. S. 189. On the other hand he must construct the road so that it may be safe to work upon. *Trask v. Cal., etc., R. R.,* 63 Cal. 96. *R. R. v. Swett,* 45 Ill. 197. He is liable for death of employe between two cars where buffers failed to meet. *Ellis v. R. R.,* 95 N. Y. 546. These decisions imply that lack of bumper should be held a defect.

MONOPOLIES—COPYRIGHT—ILLEGAL RESTRICTION OF COMPETITION.—STRAUSS V. AM. PUB. ASS'N, 83 N. Y. SUPP. 271.—Defendants, composed of 95 per cent. of the book publishers in the United States and Canada, formed a combination, the purpose of which was to compel all retailers to sell copyrighted books at a certain price fixed by the association. *Held,* that, under the N. Y. Statute (Laws 1899, c. 690, sec. 1) prohibiting contracts creating a monopoly, the combination was illegal. Van Brunt, P.J., and McLaughlin, J., *dissenting.*

This decision is directly contrary to the ruling in *Park Co. v. Druggists' Ass'n,* 175 N. Y. 1, which held that manufacturers of copyrighted goods can combine for the purpose of dictating prices at which the articles shall be sold and of requiring dealers to maintain such prices. The Park case, however, arose prior to the enactment of the present statute; but the statute is a substantial codification of the principles of the common law and must be construed as a continuation thereof. *In re Davis,* 168 N. Y. 89. This agreement does not fix the price at which the publishers must sell their books. They can name the price to the consumer now as they could before, the validity of a contract between manufacturers and purchasers to sell at a stipulated price being well determined. *Garst v. Harris,* 177 Mass. 72; *Fowler v. Park,* 131 U. S. 88; *Walsh v. Dwight,* 40 App. Div. 513. The decision in the present case would not seem to be maintainable. As the dissenting justices indicate, it is difficult to comprehend why a seller of property in respect to which he has a monopoly cannot impose any conditions as to its resale that he may desire.

MUNICIPAL CORPORATIONS—DE FACTO CLERK—PAYMENT OF SALARY—RIGHT OF DE JURE CLERK.—MARTIN V. CITY OF NEW YORK, 68 N. E. 640 (N. Y.).—Plaintiff, a clerk in municipal employ, was irregularly dismissed, but was later reinstated by mandamus proceedings. *Held,* he can not recover salary

paid to a *de facto* clerk who performed the duties of the position during the interval.

The case of *Higgins v. The Mayor*, 131 N. Y. 128, is directly in point, and following *Terhune v. The Mayor*, 80 N. Y. 185, holds that payment to another who actually did the work is a good defense to such an action by a municipal corporation. The general rule is to the contrary. *Dillon, Mun. Corps.*, sec. 235. The salary of a public office is incident to the title and wrongful payment to a *de facto* officer is no defense to an action by a *de jure* officer. *Dorsey v. Smith*, 28 Cal. 21. A municipal corporation wrongfully removing an officer is liable for his salary. *Shaw v. Macon*, 19 Ga. 468. The amount of salary received by a *de facto* officer is the measure of damages receivable by a *de jure* officer for deprivation from office. *United States v. Addison*, 6 Wall. 291.

TITLE TO ANIMAL SKINS—BURDEN OF PROOF—PRESUMPTION.—LINDEN V. MCCORMICK ET AL., 96 N. W. 785 (MINN.).—*Held*, that where the plaintiff purchased deer skins for commercial purposes, it is to be presumed the game was lawfully killed and the skins came lawfully into his possession.

No previous adjudication of the point involved has been found. It is probably the first time it has come before the court for determination. Sec. 33, chap. 22, Gen. Laws, Minn., declares that no person can acquire title to game except by proving the killing of it at the time, and in the manner authorized. This statute was declared constitutional in *State v. Rodman*, 58 Minn. 393. In the present case the court distinguished between the title to game and the title to the product thereof, *id est*, the skins. The burden of proving that the skins were not legally obtained is on the State. *James v. Wood*, 82 Me. 173. *Thomas v. Northern Pacific Express Co.*, 73 Minn. 185.

The modern tendency as set forth in this case is, that "a person in good faith may acquire a valid title to skins of wild animals although the same may have been killed contrary to law."

USE OF STREETS—ADDITIONAL SERVITUDE—TELEPHONES.—KIRBY V. CITIZENS' TEL. CO., 97 N .W. 3 (S. D.).—*Held*, that the construction and maintenance of a telephone system on the streets of a city in such a manner as not to cause unnecessary injury is not an additional servitude for which an abutting property owner is entitled to compensation.

The decision in the principal case is based upon the principle that telephones are a means of communication. The reasonable use of the streets of a city for the necessary equipment of a telephone system is not a new and additional burden for which the abutting property owner is entitled to compensation. *Anerach v. Tel. Co.*, 70 Ohio N. P. 633. Other courts hold that telephones were not in contemplation when highways were constructed. *Pacific Cable Co. v. Irvine*, 49 Fed. 113. The construction of a telephone line is an additional burden for which the abutting owner is entitled to compensation. *Eels v. Am. Tel. Co.*, 143 N. Y. 133; *Board of Trade v. Barnett*, 107 Ill. 507; *Willis v. Erie Telegraph & Tel. Co.*, 37 Minn. 347; *Stowerson v. Tel. Co.*, 68 Miss. 559.

WATERCOURSES—SUBTERRANEAN CHANNELS—PERCOLATING WATERS—ADJOINING OWNERS—WASTE—INJUNCTION.—BARCLAY V. ABRAHAM ET AL, 96 N.